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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/074,530

02/11/2002

Kevin M. Liga

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11/03/2008

SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV

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MINNEAPOLIS, MN 55402-0938

EXAMINER

LE, KHANH H

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

11/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/074,530</p>	<p>Applicant(s) LIGA ET AL.</p>	
	<p>Examiner KHANH H. LE</p>	<p>Art Unit 3688</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112(2).
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 25-31 and 42.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

KL

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688

Continuation of 11. does NOT place the application in condition for allowance because: The prima facie case under 35 U.S.C. 103(a) has been presented earlier. Applicants have not been persuasive how the Examiner did not make a prima facie case. In other words, the part of Lazaridis relied upon is the teaching of scanning many broadcast channels when needed to locate an ad. "As stated earlier, in the alternative, if a dedicated channel is known to provide such targeted ad, to tune a receiver to that channel, would have been obvious, since that would have been a more efficient method to locate the ad. In other words, even if it's true that Lazaridis teaches scanning all channels, every time, as argued, a PHOSITA would have known to apply some common sense and adapt the teachings of LAZARIDIS only as necessary to their situation. Thus if an ad is known to be located on a dedicated channel, such knowledge derived from e.g. some source independent of scanning as done in LAZARIDIS or even, e.g. after scanning a few channels as done in LAZARIDIS, it would have been obvious to a PHOSITA to either not start the scanning or stop the scanning as appropriate because doing otherwise would have been inefficient or wasting resources." The Supreme Court in KSR v. Teleflex, 127 S. Ct. 1727, has adopted a flexible approach in obviousness analyses under 35 U.S.C. 103 wherein logical reasoning and common sense as applied above would be found sufficient to make the prima facie case. It is also noted method claims 25 and 26 can be interpreted as scanning just as done in Lazaridis, thereby determining whether an ad is located on a dedicated channel. In that case a PHosita would have known to stop the scanning and tune the dedicated channel, as stated above, not to waste resources. It is noted no particular order is claimed for performing the steps of claim 26. It is also noted, as amended claims 25 and 42 read on one alternative (e.g. scanning) or the other (not scanning) but not both, therefore Applicants arguments that the Examiner fail the prima facie case cannot apply to these 2 claims.